

Approved as Submitted: September 15, 2004

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – SEPTEMBER 1, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:08 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Sellers, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Member Carr (arrived at 6:30 p.m.)
Absent: Council/Agency Member Chang

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Manager/Executive Director Tewes announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)
Case Name: Klaver v. City of Morgan Hill
Case Number: WCAB SJO 241834; San Jose Board
Attendees: City Manager, City Attorney, Human Resources Director

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:10 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:04 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor/Chairman Kennedy indicated that the closed session items were continued to the conclusion of the open meeting agenda items.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORT

Council Member Tate indicated that the Council has established an ethics subcommittee who is formulating an “Ethics Policy” for the City of Morgan Hill that will incorporate honesty, fairness, respect, responsibility loyalty, and compassion values. He indicated that he serves on the Ethics Subcommittee, along with Mayor Kennedy and 3-4 members from the Council’s various Commissions, including the Youth Advisory Committee. He stated that the ethics subcommittee met last night and identified behaviors that describe the above listed values. He said that it will take approximately 1-2 more meetings before the Ethics Subcommittee can bring a draft policy before the Council. He indicated that the Library Joint Powers Authority (JPA) met last Thursday to finalize a budget for the upcoming year. He said that the JPA could not finalize the budget until the Governor signed the State budget as the library is impacted by decisions made at the State level. He said that the good news is that there is a provision placed in the State budget that exempts libraries from the shift of funds to education. Therefore, \$2.4 million in library funding was saved and that there will be no layoffs to take place in the County and local library system. The bad news is that with increased wages/benefits, and other minor cuts made by the State, the Morgan Hill library will be closed every Monday starting October 1 to help bring the library budget into balance. He said that there is some optimism with a new library ballot measure and that with proper/extensive planning and significant fundraising; there may be a good opportunity to pass a ballot measure on a second attempt in 2005. He encouraged individuals interested in helping with the planning to become a part of the process to assist with the ballot measure. He addressed the new library to be built on the civic center site. He invited the public to attend a September 13, 2004, 7:15 p.m. Library Commission meeting and provide feedback on the early planning that is taking place on the new library. To be revisited is the vision, goals, and objectives for the library. He said that there has been some preliminary design work done in looking at a 28,000 square foot layout for the library.

CITY MANAGER REPORT

City Manager Tewes reminded the Council and members of the community of the importance and usefulness of the City’s webpage. He indicated that the City’s homepage will feature links to important information about the West Nile virus and about mountain lion sightings. He stated that the City’s

webpage has some helpful tips on how an individual can protect oneself from both of these instances. He said that in some of the rural areas in the County some animals, including some birds, have been infected by the West Nile virus. He said that the West Nile virus has been moving west in California and has been found in Santa Clara County.

CITY ATTORNEY REPORT

Acting City Attorney William McClure indicated that he did not have a City Attorney's report to present this evening.

OTHER REPORTS

None.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Mayor Kennedy welcomed the Live Oak High School Seniors to the Council meeting. He announced that the City will be co-sponsoring, in association with the Morgan Hill Chamber of Commerce, a Patriot's Day Remembrance to be held on Saturday, September 11, 2004 @ 10:00 a.m. at the Community & Cultural Center Amphitheater. He encouraged citizens to attend. He also announced that on October 1, 2004, the State of California will be celebrating and recognizing "California Arts Day." He indicated that a reception will be held at the Community & Cultural Center on this day. He pointed out that art is important to the community as it improves the education and academic performance of children, contributes to the cross cultural understanding, boosts tourism, promotes civic pride, and provides an outlet for creative expression. The arts are extremely important, employing more than 160,000 individuals in California and generating \$5.4 billion in economic activity; providing \$300 million in State and local taxes. Therefore, he felt that it was important to support the arts and encouraged citizens to attend the reception to be held October 1.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Items 1-16 as follows:*

1. **EXTENSION OF SUBDIVISION IMPROVEMENT AGREEMENT – ALCINI PARTNERSHIP**

Action: Granted *Limited Amendment to Subdivision Improvement Agreement (Without Splitting of Bonds).*

2. **EXTENSION OF MILLER NETWORKS CONTRACT**

Action: Authorized *the City Manager to Execute the Agreement, Subject to Review and Approval by City Attorney.*

3. **RESPONSE TO SANTA CLARA COUNTY GRAND JURY REPORT “INQUIRY INTO POLICE EVIDENCE ROOMS IN SANTA CLARA COUNTY”**

Action: Directed *Staff to Provide the Responses Described in the Staff Report to the 2003-2004 Santa Clara County Grand Jury.*

4. **RESPONSE TO SANTA CLARA COUNTY GRAND JURY REPORT “INQUIRY INTO FINANCIAL AND PERFORMANCE AUDITS FOR THE COUNTY AND CITIES IN THE COUNTY”**

Action: Directed *Staff to Provide the Proposed Response to the 2003-2004 Grand Jury Concerning Their Final Report “Inquiry into Financial and Performance Audits for the County and Cities in the County”.*

5. **FINAL MAP APPROVAL FOR VIALE (TRACT 9589)**

Action: 1) **Approved** *the Final Map, Subdivision Agreement and Improvement Plans;* 2) **Authorized** *the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City;* and 3) **Authorized** *the Recordation of the Map and the Subdivision Improvement Agreement following Recordation of the Development Improvement Agreement.*

6. **FINAL MAP APPROVAL FOR CAPRIANO, PHASE II (TRACT 9617)**

Action: 1) **Approved** *the Final Map, Subdivision Agreement and Improvement Plans;* 2) **Authorized** *the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City;* and 3) **Authorized** *the Recordation of the Map and the Subdivision Improvement Agreement following Recordation of the Development Improvement Agreement.*

7. **FINAL MAP APPROVAL FOR MISSION RANCH, PHASE VII (TRACT 9602)**

Action: 1) **Approved** *the Final Map, Subdivision Agreement and Improvement Plans;* 2) **Authorized** *the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City;* and 3) **Authorized** *the Recordation of the Map and the Subdivision Improvement Agreement following Recordation of the Development Improvement Agreement.*

8. **AWARD OF PROFESSIONAL SERVICES CONTRACT TO PREPARE PROJECT STUDY REPORT/PROJECT REPORT (PSR/PR) FOR THE HIGHWAY 101/TENNANT AVENUE INTERCHANGE PROJECT**

Action: Authorized *the City Manager to Execute a Consultant Agreement with Mark Thomas & Company, Inc. for the Preparation of a Project Study Report/Project Report (PSR/PR), including all Environmental Studies and Geometric Alignments Necessary to begin the Process for the*

Highway 101/Tennant Avenue Interchange Project, Subject to Review and Approval by the City Attorney.

9. **PURCHASE OF PHOTOCOPIERS**

Action: 1) **Authorized** the Purchase of Four New Copiers through Rabbit Office Automation, Subject to City Attorney Review and Approval; 2) **Declared** the Three Existing Copiers as Surplus, and Authorize Disposal by the Purchasing Officer; and 3) **Approved** \$8,947 in Additional Appropriations from the Public Facilities Non-AB1600 Fund, and \$24,341 in Additional Appropriations from General Fund Reserves.

10. **ADOPT ORDINANCE NO. 1690, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1690, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1660, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNS 728-34-002 & -003).**

11. **ADOPT ORDINANCE NO. 1691, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1691, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1658, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA-03-13 FOR APPLICATION MP 02-15: MISSION VIEW-MISSION RANCH TO ALLOW FOR THE INCORPORATION OF 22 SUPPLEMENTAL BUILDING ALLOCATIONS AWARDED IN THE 2003 RDCS COMPETITION. (APN 728-32-008 & 009).**

12. **ADOPT ORDINANCE NO. 1692, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1692, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.24 (CENTRAL COMMERCIAL/ RESIDENTIAL DISTRICT) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-04: CITY OF MORGAN HILL-TEXT AMENDMENT/CC-R).**

13. **ADOPT ORDINANCE NO. 1693, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1693, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 9.04.010(A) (Discharge-Permit Required-Fee) OF CHAPTER 9.04 (WEAPONS) AND ENACTING**

CHAPTER 9.06 (IMITATION WEAPONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PROHIBITION OF IMITATION WEAPONS.

14. **SPECIAL CITY COUNCIL MEETING MINUTES FOR AUGUST 18, 2004**
Action: Approved the Minutes as written.
15. **SPECIAL CITY COUNCIL MEETING MINUTES FOR AUGUST 25, 2004**
Action: Approved the Minutes as written.
16. **SPECIAL CITY COUNCIL MEETING MINUTES FOR AUGUST 25, 2004 COYOTE VALLEY SPECIFIC PLAN WORKSHOP**
Action: Approved the Minutes as written.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Carr, the City Council/Agency Board, on a 4-0 vote with Council/Agency Member Chang absent, Approved Consent Calendar Items 17 & 18 as follows:*

17. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR AUGUST 18, 2004**
Action: Approved the Minutes as written.
18. **JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES FOR AUGUST 25, 2004**
Action: Approved the Minutes as written.

Redevelopment Agency Action

CONSENT CALENDAR:

Council Member Carr requested that item 19 be removed from the Consent Calendar.

19. **MORGAN HILL DOWNTOWN ASSOCIATION (MHDA) REQUEST FOR PROPERTY BASED IMPROVEMENT DISTRICT (PBID) FUNDING**

Agency Member Carr noted that staff report suggests that if the effort to form a PBID or another assessment structure is not successful, there would not be a requirement to repay the loan. He expressed concern that this may be a “disincentive” or an “incentive for defeat.” He referred to page 179-b of the agenda packet; the implementation schedule. He felt that the repayment of the loan and forgiving parts

of the loan could be tied to the implementation schedule so that the City has a way of providing incentives for success instead of incentives for failures. He recommended that at each step, a certain percentage or dollar amount is taken off the loan. This would allow a certain percentage of the loan to be forgiven, stepping down the percentage in order to provide an incentive to a successful PBID.

Agency Member Tate said that it was his understanding that the loan would be repaid when the PBID goes into affect. He inquired whether Agency Member Carr was suggesting relief from the loan, even if the PBID is successful.

Agency Member Carr stated that it was his understanding from the structure of the loan that should the MHDA go through the process and are not successful in passing the PBID, the City will forgive the loan. This would result in the City being out \$40,000 and the City would not have a property based improvement district for the downtown. He recommended that the City loan the MHDA \$40,000 and provide them incentives for success. If the MHDA meets different milestones, going through the process, the City will forgive portions of the loan in increments as they move toward. It is his hope that the MHDA gets to a point where there will be a successful PBID and a successful way for the Downtown Association to fund themselves.

Agency Member Tate did not believe that the MHDA will be able to repay the loan.

Agency Member Carr noted that the MHDA has a due structure in place and ways to generate dollars at this time. Should certain milestones be achieved, he recommended that a certain portion of the loan be forgiven.

Vice-chairman Sellers stated that Downtown Association met today, indicating that a representative from the Downtown Association was in attendance who could elaborate on the discussions. He felt that Agency Member Carr's suggestion has merit and that the Agency Board may wish to consider it. He pointed out that there is a significant incentive for the Downtown Association to proceed and to successfully implement a PBID. He noted that the Agency Board has stated that it would fund the Downtown Association for a number of years with the understanding that at some point in time it would develop a property tax base or business improvement district in order to be self reliant. He felt that the Downtown Association understands this point and that the Agency Board has made it clear, through its actions and comments that should the business improvement district fail, and the likelihood of receiving continued funding from the City would diminish significantly.

Director of Business Assistance and Housing Services Toy requested clarification on Agency Member Carr's proposal. He inquired whether it was the concept that the Agency Board would forgive portions of the loan if the Downtown Association met certain milestones. However, if they were unsuccessful, that portion of the loan would have to be repaid. Should the Downtown Association be successful, would the City forgive the entire loan or would they still have to repay a portion of the loan?

Agency Member Carr said that the concept of rewarding failure is opposite to what the Agency Board should be doing. He was not sure what portion of the loan should be forgiven. He would like the Agency Board, as it moves forward with this item and economic development efforts, to provide incentives for

success instead of failures. He supported the approval of the recommended action in order to allow the Downtown Association to move forward. If there are loan terms that need to be worked out, the Agency Board can do so at a later date.

Chairman Kennedy supported Agency Member Carr's suggestion. He stated that he would not be willing to support the recommended action unless a vote is taken by the downtown merchants. If merchants do not want to be a part of the PBID, he would like to know this fact. If the Council is to authorize funding, he wants the process to be taken all the way to a vote.

Chairman Kennedy opened the floor to public comment.

Dan Craig indicated that there is a step in the PBID process where there is a ballot process before the PBID is finalized. He said that the first major step in the process is to develop a management/business plan. It is important to prepare all of the information into a draft document. He indicated that a draft of the document is proposed to be completed in December 2004 with a final document to be completed in late January 2005. He stated that the entire process is arrived through: a participatory process, focused groups, one-on-one meetings, public forums, etc. This process gives you a sense of buy in from all of the potential assesses. He indicated that before it gets to the ballot stage, it is incumbent upon the PBID steering committee to petition over 51% of the potential assesses to vote in support of the PBID. He stated that the group is moving forward confidently based on the make up of the steering committee who are the core supporters of the PBID and significant property owners in the downtown. He stated that the PBID cannot move forward without a majority petition support, including the balloting process of the potential assesses in the district. He said that these are all legal steps in the process that have to be adhered to. He clarified that a vote will be taken to determine support of the PBID. He indicated that he has conducted a preliminary look at the potential possibilities. He said that the Downtown Association and a core group of the steering committee understands that it has an incentive to pass the PBID as it is a fight for their survival. Therefore, there is a built in incentive to succeed.

No further comments were offered.

Agency Member Tate felt that Agency Member Carr raised a good suggestion. He would support waiving half of the loan should the Downtown Association be successful in the formation of a PBID.

Acting City Attorney McClure said that should the Downtown Association not get to the balloting process, he did not believe that the Downtown Association would be spending the entire \$40,000 loan.

Director of Business Assistance and Housing Services Toy clarified that a portion of the \$40,000 loan includes the balloting process, hearings, petition preparation, consulting fees, marketing for the PBID process, and possible legal fees. However, it may be that the City may review the PBID for compliance with Proposition 218. He stated that there may be a possibility that the Downtown Association may not spend all of the \$40,000.

Agency Member Carr said that his interest in this is not specific to this agenda item. He felt that the City needs to change the framework of how it structures loan/incentives in the future; thinking about

successes rather than the other way around. He supported simplifying the action in order to move the item forward this evening.

Action: *On a motion by Agency Member Carr and seconded by Agency Member Tate, the Agency Board, on a 4-0 vote with Agency Member Chang absent, **Authorized** the Executive Director to Negotiate and Execute a Loan Agreement, Subject to Agency General Counsel Review and Approval, with the Morgan Hill Downtown Association (MHDA) in an Amount not to Exceed \$40,000 for Consulting Services Needed to Assist with the Formation of a Property Based Improvement District (PBID) with the stipulation that half of the loan does not need to be repaid upon the success of the BPID balloting.*

City Council Action

PUBLIC HEARINGS:

20. ZONING AMENDMENT, ZA-04-07: DIGITAL-VENTURE PROFESSIONAL CENTER (Continued from 8/18/04) – ***Ordinance No. 1694, New Series***

Planning Manager Rowe presented the staff report, indicating that the Council approved a mitigated negative declaration for this project on August 18, 2004. However, the Council continued the zoning amendment ordinance to this evening's meeting, directing staff to make amendments to the ordinance in response to public comments received by representatives of the DePaul Health Center. He indicated that the DePaul Health Center representatives expressed concern over the establishment of an MRI facility on this site. He informed the Council that the amended ordinance incorporates the changes as directed by the Council.

Mayor Kennedy opened the public hearing.

Brian Kelley, Venture Corporation, requested clarification on the permitted uses. He indicated that in the medical portion of the development, it does not specifically state that medical testing labs are permitted. He informed the Council that a lab will be proposed where blood testing will occur and requested that the City allow this activity as a permitted use.

Planning Manager Rowe indicated that medical testing labs are currently permitted uses under the existing zoning and that it will be permitted under the proposed zoning amendment.

Mr. Kelley noted that it is being stated that medical/dental, research, experimental, film and testing laboratories shall include only those facilities where analysis testing is completed with no patient contact involved. He indicated that patients come to the lab to give blood samples.

Planning Manager Rowe said that the uses he referred to are ones where the samples are received by the laboratory from the medical office of the medical practitioners. He clarified that if it is a type of use where an individual would go to the site to have the blood sample taken on the premise for testing, this

would fall under the medical office use which is part of this amendment. He stated that having the samples sent or taken at the laboratory would be permitted.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council on a 4-0 vote with Council Member Chang absent, **Waived** the First and Second Reading of Ordinance No. 1694, New Series.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No.1694, New Series, by Title only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1474, N.S., AMENDING THE LIST OF PERMITTED USES FOR DIGITAL ISLAND OF THE MORGAN HILL RANCH BUSINESS PARK TO ALLOW GENERAL OFFICE USES AND UP TO 40,000 SF OF MEDICAL/DENTAL OFFICE USES (APNs 726-25-080 thru -082) (ZA-04-07: DIGITAL – VENTURE PROFESSIONAL CENTER), by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.***

21. ANNEXATION APPLICATION, ANX-03-02: DEWITT-MARRAD – Resolution No. 5840

Planning Manager Rowe presented the staff report, recommending that the Council adopt a resolution that would provide for the annexation of 2.11 acres. He informed the Council that the annexation will be conducted in two phases and that the action before the Council is for the 2.11 acres and not the entire four acres. Therefore, the Council has been provided an amended exhibit that depicts the 2.11 acres and the revised property description to match this acreage.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution No. 5840, Approving the Annexation.*

City Council Action

OTHER BUSINESS:

22. WATER CONSERVATION PLANNING ACTIVITIES

Programs Administrator Eulo presented the staff report, informing the Council that staff has come up with a plan for two months of activities that will cause an increase in water conservation activities. He informed the Council that the purpose of this item is to check with the Council to make sure that staff is proceeding with the water conservation activities that should be pursued prior to investing a lot of time,

resources, and public outreach. He walked the Council through the proposed six water conservation planning activities.

1. Develop a water conserving rate structure for landscape accounts. It appears that the best way to proceed with this activity is to set up a water budget for each landscaped area that has a landscape account. It was noted that the City has approximately 500 landscape accounts. It is felt that you can get a sense of how much water is demanded by landscaping, setting up a budget for the site. This activity would give each customer an incentive to have their irrigation in line with the weather. It is felt that this activity appears to be the fairest and most scientific way to establish rates that escalate.

Mayor Kennedy felt that this was an excellent approach to recognizing the uniqueness of homeowners associations and developments that have large amount of landscaping that need to be addressed.

2. An ordinance that requires new large landscape development to come in with a water efficient landscape design from the onset. Staff does not believe that the ordinance would have an impact on the City's current Measure C guidelines/criteria. If mandated, it would not make sense to award Measure C points. On the other hand, if a developer is proposing something extra beyond the ordinance, the points could be left in. Staff recommended that the Residential Development Control System committee review the ordinance.

Council Member Carr noted that the staff report states that the City's current guidelines encourage water efficient landscaping. He noted that the City's encouragement of water efficient landscaping has been unsuccessful.

Mr. Eulo stated that if you drive through certain business parks in town, you can see that the encouragement of water efficient landscaping has not been successful, resulting in a vast amount of turf taking up a lot of City water.

3. Require new multi family buildings to have meters, each resident paying for their own water use. A separate water account would be established for each unit. Staff noted that this requirement would add some cost to the development of the building. Staff indicated that most of the City's market rate newer multi family structures have installed separate meters for each residence. However, affordable projects have not incorporated these measures. Staff stated that a new study has been released that shows that in units that have some metering, 15% less water is used.

Mayor Pro Tempore Sellers said that he understands the concept that there would be water savings with multi family unit metering. However, he felt that this would be predicated on the fact that every unit would have to pay their own water and that users will become efficient in their water use. If the landowner is required to pay for the water for all units, it would defeat the purpose. He stated that it makes sense and would work if each unit would be paying for their own water. However, if you do so in low income projects, the City would be passing on a cost that may otherwise be borne elsewhere. He felt that the City should give thought to making this a structure and yet make it feasible. He recommended that in addition to the requirement for the installation of individualized meters, the City conduct an educational program as well.

4. Demonstration water conservation garden. Staff informed the Council that the City has a landscape architect under a small preliminary contract to design a demonstration water conservation garden that will take over a portion of turf at city hall, reducing water waste and labor. If supported, staff will be returning to the Council for funding.

Mayor Kennedy inquired whether staff has spoken with the Santa Clara Valley Water District (SCVWD) about the possibility of partnering with them on a demonstration water conservation garden as they may have some money for this purpose.

Mr. Eulo responded said that he has spoken with SCVWD staff who have indicated that they are willing to participate, financially, after the City completes the preliminary design and have some idea as to the amount of money that will be needed to construct the garden.

Mayor Pro Tempore Sellers stated that the proposed location of a demonstration water conservation garden at City Hall is not as visible to the public as other areas. He noted that the City has a pocket park located south of Second Street that was set up partly as a zero scape landscaping area. If there are sufficient resources, he recommended that this program be extended to this park, including signage that identifies the park as a demonstration water conservation garden.

Mr. Eulo informed the Council that staff has other sites in mind that would be appropriate areas for a water conservation garden (e.g., the library site).

City Manager Tewes indicated that another site being contemplated is the connection pathway from the County Courthouse to the downtown. He stated that the County has value engineered out a lot of the amenities that would otherwise have been installed. He felt that a demonstration garden could be implemented in a way that would pursue the City's values for water conservation.

Mayor Kennedy said that one part of the aquatics center area has turf and that underground irrigation has been installed. He felt that this is another alternative that could be considered for conserving water. Instead of using sprinklers which evaporate and waste water, you can design underground sprinkler heads.

5. Retrofit at resale ordinance. It is proposed that when a homeowner sells a house, there be a requirement to have modern, low flow toilets and aerators on the facets installed.

Mayor Pro Tempore Sellers expressed concern that you may have a situation where a homeowner does not have the economic resources to retrofit at time of sale. However, he noted that low flow toilets and aerators are available through incentive programs. He did not want to place an extra burden on individuals. He felt that low flow toilets and aerators are fairly low cost items and that with the cost of housing prices; it would be a fraction of the cost. He recommended that the City encourage these actions but that it be done in a way that does not create an undo burden for someone who has limited means.

6. Economic incentive program. This program proposes that the City make a pool of money available to large landscape owners and eventually to homeowners for landscaping and retrofits. This would include installation of water efficient irrigation as well as ripping up turf and installing water-wise plants. It is proposed that this would be a revolving loan fund where individuals would pay back the loan based on the reduction in water bills. He informed the Council that the State has a grant program application (Proposition 50) that is due by October 2005. He intends to return to the Council to request authorization to apply for the grant. This may result in a 50% State money and 50% city water fund money that would seed this economic incentive program in order to make the funds available.

Mayor Kennedy stated that staff prepared an excellent report.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *The Council **received** the report. **No action** was taken.*

23. REPORT OF THE LEGISLATIVE SUBCOMMITTEE

Mayor Pro Tempore Sellers presented the Council's Legislative Subcommittee Report, offering the following recommendations:

League of California Cities Annual Conference Resolutions – Take no action.

Wireless Telecommunication Ordinance – Refer the ordinance to the Economic Development subcommittee and determine whether there would be anything that would make the City becomes more difficult to become a wireless city. If so, how they can be mitigated before going through the extensive legal process of instituting a proposed ordinance.

Statewide Propositions – There are a number of propositions on the ballot, some of which impact the community, none more so than Proposition 1A. This is a proposition that will have direct financial impacts on cities. Cities are facing significant cutbacks due to the actions taken by the State. This proposition will help to provide economic stability for cities in the long term. It is recommended that the Finance & Audit Committee review the specifics of Proposition 1A and report back to the Council as to the specifics. The Legislative Subcommittee believes that Proposition 1A should be supported by the City but recommend that there be further review before supporting it.

Mobile Home Rent Review – There is a court case that is currently before the State Supreme Court. The League of California Cities has joined in the lawsuit, filing an amicus brief. By doing so, the League is representing all Cities in California. It is being recommended that the City Manager investigate whether there are any other actions that can be taken to express the City's support of this. He indicated that the City is listed as a supporter through the amicus brief.

Senate Bill 1056, Superstore Retailers – This is a legislative process that would require an economic impact report be prepared before cities would approve superstore retail projects. It is felt that in concept, there is merit to this bill. The Legislative Subcommittee is concerned about the specific

impacts it might have on some projects that are just getting underway in Morgan Hill. It is being recommended that the Economic Development subcommittee review this bill and determine whether there are any specific concerns that might impact the City's economic development.

Council Member Tate referred to Senate Bill 1056, noting that the bill is on the Governor's desk at this time. He did not understand the recommendation that additional study be conducted.

Council Member Carr responded that the Legislative Subcommittee did not know, in its review of Senate Bill 1056, how the bill will impact Morgan Hill, economically. On its face, it appears to be a good bill or a good requirement to implement. However, it is not known how this bill would affect Morgan Hill specifically. He said that it may be that the City may not be able to analyze the bill as the Governor could act upon it upon his return from New York.

Mayor Pro Tempore Sellers felt that there could be some actions that the City might want to undertake should the Governor veto the bill. However, it was felt that the economic impacts should be analyzed before taking actions.

Council Member Tate indicated that he learned about Senate Bill 1161 over the weekend. This bill proposes to allocate \$600 million to library construction; \$300 million of which would be allocated to unsuccessful round three applications of Proposition 14 funding. He indicated that this bill passed the assembly and the senate and that it is on the Governor's desk. It has been indicated that the Governor's finance department has recommended against signing this bill. He indicated that he intends to correspond with the Governor and that it was his hope that other members in the public would do so as well as receiving funding would be a boon to Morgan Hill. He clarified that he was not asking for the Legislative Subcommittee to review or make a recommendation but that he was asking those members of the public who want to make an appeal to the Governor and help in the expansion of the City's library, to do so within the next week or so.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Council Member Chang absent, **accepted** the report and recommendations of the Legislative Subcommittee.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

24. REVIEW OF CITY COUNCIL AND REDEVELOPMENT AGENCY'S NOVEMBER, DECEMBER, AND JANUARY MEETING SCHEDULE

City Clerk/Agency Secretary Torrez presented the staff report.

Mayor Pro Tempore/Vice-chairman Sellers offered the following meeting schedule: Cancel the November 24 meeting. If a 3rd meeting in November is required, that it be scheduled for November 10. Cancel the December 22 meeting, scheduling a meeting on December 8, if necessary. Cancel the January 5, 2005 meeting, scheduling a special meeting on January 12, 2005 as staff will not be able to prepare an agenda for the January 5, 2005 meeting due to the furlough.

Mayor/Chairman Kennedy concurred with Mayor Pro Tempore/Vice-chairman Sellers' recommendation regarding the November 2004 and January 2005 changes. He indicated that the Council and/or Redevelopment Agency could meet on December 22 versus canceling this meeting.

Mayor Pro Tempore/Vice-chair Sellers indicated that the Council/Agency Board could meet on December 22. He noted that in December, the Council will have at least one new councilmember elected. He did not know whether there would be lighter load that time of year or what impact this would have. He recommended that the Council not meet on December 22 and schedule a special meeting on December 8, if necessary.

Council/Agency Member Tate supported Mayor Pro Tempore/Vice-chairman Sellers' suggested meeting schedule.

City Manager Tewes informed the Council that it has been the Council's practice to have an annual goal setting session in mid-January or so on a Friday and Saturday. He noted that the Council's reorganization will more than likely take place on the first meeting in December. The Council may wish to discuss the scheduling of the 2005 goal setting session with the new City Council. He requested that the Council give thought to a good time to set aside for the goal setting session.

Mayor Pro Tempore Sellers recommended that staff come up with suggested dates for the goal setting session. This can be agendaized for Council discussion in the first meeting in December.

Mayor/Chairman Kennedy and Council/Agency Member Carr indicated that they would concur with Mayor Pro Tempore Sellers recommended meeting date changes.

Action: *By consensus, the City Council/Agency Board **Agreed** to the following meeting schedule: November 3 (regular meeting), November 10 (special meeting, if needed), November 17 (regular meeting), November 24 meeting cancelled; December 1 (regular meeting), December 8 (special meeting, if needed), December 15 (regular meeting), December 22 meeting cancelled; January 5, 2005 meeting cancelled, January 12 (special meeting, January 19 (regular meeting), and January 26 (regular RDA meeting).*

RECONVENE TO CLOSED SESSION

Mayor/Chairman Kennedy reconvened the meeting to Closed Session at 8:15 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 8:42 p.m.

CLOSED SESSION ANNOUNCEMENT

Acting City Attorney/Agency Counsel McClure announced that no reportable action was taken in closed session.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 8:43 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY